

REMARKS

Amendments as to Form

The Final Office Action mailed June 12, 2007 indicated that claims 5-9, 11-18, 40-42, 45 and 46 would be allowable if rewritten in independent form including all of the limitations of the base claims. Applicant has amended these claims accordingly and as such, the amendments do not constitute new matter. Allowance of these claims is respectfully requested.

102(b) Rejection: July 23, 2007 Interview

In the Final Office Action, the Examiner maintained the 102(b) rejection of claims 1-3, 10, 21-23, 26-29, 36, 37 and 47-51 as being anticipated by Keldmann et al., WO 98/53869 (“Keldmann”) as evidenced by Grossan US Patent No. 3,847,145 (Grossan”). In a telephonic interview conducted on July 23, 2007, Examiner Mendoza and the undersigned Attorney Neuman discussed this ground for rejection. Applicant and his Attorney wish to thank the Examiner for granting the interview and for the opportunity to supplement the record with respect to the cited references. The following remarks will serve as Applicant’s statement of the substance of the interview, as required by 37 C.F.R. §1.133(b) and MPEP Section 713.04. Based on the arguments presented in the interview, and repeated herein, Applicant respectfully requests that the Examiner reconsider and withdraw the 102(b) rejection of claims 1-3, 10, 21-23, 26-29, 36, 37 and 47-51.

In the interview of July 23, 2007, the Examiner explained that the basis for the 102(b) rejection in the Final Office Action is Keldmann’s FIG. 8. According to the Examiner, FIG. 8 shows a device having a nasal outlet with an increasing diameter, which is similar to the frusto-conical nosepiece disclosed in Grossan. This nosepiece, the Examiner alleged, would seal the nostril, and thus the use of the Keldmann device to deliver a substance to the nasal airway of a subject would anticipate Applicant’s claim 1.

Attorney Neuman responded by drawing the Examiner’s attention to the description of FIGS. 8 and 9 in Keldmann, page 12, lines 9-14. Therein, the nosepiece is not described as having a shape that would create a seal when inserted into the nostril. Indeed, there is no

disclosure in Keldmann, either express or implied, of the step of sealing a nostril.¹ To the contrary, FIGS. 8 and 9 are directed to an alternative method of manufacturing the device by heat welding, as follows:

“The tubular device 10 may be made by any suitable method of production. Even though extrusion is preferred because it is relatively cheap, vacuum forming may also be used. Figs. 8 and 9 show an embodiment which has been made by heat welding a pair of separately vacuum formed parts together along opposite longitudinally extending seams 17.” (Keldmann, page 12, lines 9-14)

Attorney Neuman further submitted that the longitudinally extending seams (17) of the FIG. 8 device, which are shown in cross-section in FIG. 9, would prevent the nosepiece from creating a seal between the outlet and one nostril, as claimed by Applicant. The Examiner indicated his tentative agreement with this position in the interview itself, and he confirmed his agreement in the August 1, 2007 Interview Summary. Accordingly, Keldmann fails to disclose Applicant’s claimed method step of “sealing one of the nostrils of a subject to an outlet of a delivery unit such as to prevent the escape of a gas flow through the one nostril” and for this reason, the 102(b) rejection should be withdrawn.

This position is consistent with the Examiner’s “Reasons for Allowance” of Applicant’s parent Application No. 09/700,532 (issued as U.S. Pat. No. 6,715,485). Therein, the Examiner recognized that “the prior art of record [including Keldmann] fails to teach or render obvious the overall claimed invention of a nasal delivery device for delivering a substance to the nasal airway of a subject, comprising: a closure unit for causing the closure of the oropharyngeal velum of the subject; and a delivery unit wherein the delivery unit comprises a nose piece which includes an outlet and a sealing member for providing a fluid tight seal between the outlet and one nostril.” (Emphasis added.)

¹ A detailed discussion of Keldmann’s failure to disclose the sealing step of Applicant’s claim 1 is provided in Applicant’s March 30, 2007 Response to Non-Final Office Action at pages 9-12.

Rejections Under 35 U.S.C. § 103

In the Final Office Action, the Examiner rejected claims 4, 19, 20, 24, 25 and 30-35 under 35 U.S.C. § 103 (a) as being unpatentable over Keldmann, when taken alone or in view of US Patent No. 5,937,852 to Butler et al. (“Butler”). Applicant submits that these claims are allowable, as they depend from allowable base claim 1. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the 103 rejection.

Information Disclosure Statement

Applicant submits herewith a copy of the Information Disclosure Statement filed November 21, 2006, and respectfully requests that the Examiner consider and initial each item, and return an initialed copy to the Applicant.

CONCLUSION

In view of the foregoing, Applicant respectfully submits that claims 1-51 are in condition for allowance and requests early favorable action. The Examiner is welcome to contact Applicant’s Attorney at the number provided below with any questions.

Respectfully submitted,

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